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2007 MAR 27 PM 1:16
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

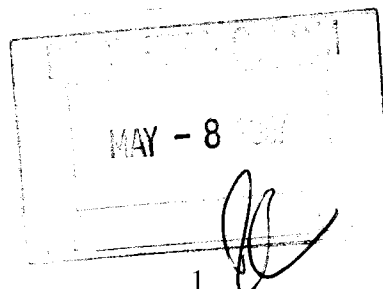
In re: LIVE CONCERT ANTITRUST
LITIGATION

MDL No.: 2:06-ML-01745 SVW-
(RCx)

This document relates to:
MALINDA RILEY v. CLEAR
CHANNEL COMMUNICATIONS,
INC., ET AL
2:06-CV-02381-SVW-(RC)
(N.D. Ill. 05-c-05612)

**THIRD AMENDED CLASS
ACTION COMPLAINT**
**The Honorable Stephen V.
Wilson**

Plaintiff, Malinda Riley, for her Third Amended Class Action Complaint, upon personal knowledge as to facts pertaining to herself and upon information and belief as to all other matters, based on the investigation of her counsel, against Defendants Clear Channel Communications, Inc., Clear Channel Entertainment, Inc., Clear Channel Radio, Inc., Clear Channel Broadcasting, Inc., and Live Nation, Inc. (collectively, "Clear Channel" or "Defendants"), states as follows:



99
ORIGINAL

NATURE OF ACTION

1. Plaintiff brings this regional civil antitrust class action for damages and injunctive relief on behalf of direct purchasers of tickets to live rock concerts from Clear Channel in Chicago, Illinois, and all areas of the United States within a 150 mile radius (the “Chicago Region”). This lawsuit arises out of the unlawful and anticompetitive practices of a major radio broadcasting and concert promotion conglomerate, Clear Channel Communications, Inc. - by itself and through its various subsidiaries and affiliates (including but not limited to the named Defendants herein) - to prevent competition for concert promotion services nationwide and thereby increase the cost of tickets Plaintiff and the Class purchased to live rock concerts. Through a series of mergers valued at nearly \$20 billion, and through other anticompetitive and predatory practices described below, Clear Channel has built a monopolistic, multimedia empire that has substantially harmed competition resulting in higher concert ticket prices and fewer offerings for Plaintiff and the Class. This is true across the nation, as well as in the Chicago Region. While the ticket prices in one city may sometimes differ from those in another city, tickets have increased in a material amount across the Chicago Region as a result of Clear Channel’s monopolistic behavior.

2. Defendants’ anticompetitive conduct includes the following, as examples:

- Limiting radio airplay of artists who refuse to use Clear Channel’s concert promotion services;
- Denying promotional air-time to artists who use competing promoters;
- Refusing to accept advertising by other concert promoters, charging excess fees for such advertising, or limiting such advertising to undesirable time slots;
- Excluding concerts promoted by competitors from radio updates of upcoming concerts; and

- Inflating fees paid to artists, in some cases more than 100% of gross sales, in order to exclude competitors from the market.

3. This regional class action was filed to protect the direct purchasers of tickets to live rock concerts from Clear Channel in the Chicago Region. The following venues were, during the class period, owned, operated and/or exclusively programmed by Clear Channel: Allstate Arena, Ford Center for the Performing Arts, Oriental Theater, Rosemont Theater, Shubert Theater, The Cadillac Palace Theater, The Tweeter Center (n.k.a. First Midwest Bank Amphitheatre), United Center, Alpine Valley Music Theater and Marcus Amphitheater.

4. In 2002, a class action titled *Heerwagen v. Clear Channel Communications, Inc.*, Case No. 02-CV-4503 (S.D.N.Y.), was filed against certain of the Defendants in the United States District Court for the Southern District of New York on behalf of a nationwide class of concert ticket purchasers. Plaintiff and the Class here would have been members of that putative nationwide class. However, in August 2003, the *Heerwagen* Court found that the relevant market was regional, rather than national, and denied a motion for certification. The District Court's decision was affirmed by the Second Circuit on January 10, 2006. *Heerwagen v. Clear Channel Communications*, 435 F.3d 219 (2d Cir. 2006). Accordingly, Plaintiff files this class action on behalf of rock concert ticket purchasers in the Chicago Regional market.

5. Clear Channel's anticompetitive practices have resulted in highly inflated concert ticket prices that are unrelated to inflation. For example, from 1991 to 1996 (immediately before Clear Channel began acquiring many of its major competitors in the promotion market), concert ticket prices rose on a nationwide basis by 21 percent, while the Consumer Price Index shows that all prices grew by 15 percent. Yet during the time when Clear Channel's consolidation of the industry and anticompetitive practices were implemented, concert ticket prices ballooned by 61 percent nationwide while the Consumer Price Index increased by just 13 percent. Similarly, a study comparing the prices of concert tickets against the Consumer Price Index for movies,

1 theater and sports during the period of consolidation reveals that concert prices have
 2 increased across the country by 54 percent while the prices for movies, theater and
 3 sporting events increased just 24 percent. As a result of Clear Channel's illegal
 4 conduct, Plaintiff and the Class paid and continue to pay artificially high prices for
 5 concert tickets. In short, due to Defendants' actions, Plaintiff and the Class have been
 6 deprived of the benefits of free and open competition across the nation.

7 6. Plaintiff seeks damages and injunctive relief on behalf of the Class.

8 **JURISDICTION AND VENUE**

9 7. The Court has jurisdiction over the claims relating to violations of Section
 10 2 of the Sherman Act under 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. § 15. The
 11 Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. §
 12 1367(a). The federal and state law claims arise from the same events and transactions,
 13 involve substantially identical issues of fact and law, and are so related to each other
 14 that they form part of the same case or controversy under Article III of the United
 15 States Constitution.

16 8. Venue is proper in this judicial district under 15 U.S.C. § 22 and 28
 17 U.S.C. § 1391. Clear Channel transacts business and many of the acts and events
 18 giving rise to this action occurred within this district.

19 **PARTIES**

20 9. Plaintiff Malinda Riley is a resident of Chicago, Illinois. Plaintiff
 21 purchased one or more tickets for rock concerts promoted and held by Defendants in
 22 the Chicago Region during the Class Period defined below.

23 10. Defendant Clear Channel Communications, Inc. ("Clear Channel
 24 Communications") is a corporation organized and existing under the laws of the State
 25 of Texas, with its principal place of business located at 200 East Basse Road, San
 26 Antonio, Texas 78209. Upon information and belief, Clear Channel Communications
 27 sometimes also does business as, among other things, "Clear Channel Worldwide" and
 28 "Clear Channel Concerts."

1 11. Defendant Clear Channel Entertainment, Inc. ("Clear Channel
2 Entertainment"), upon information and belief, is a corporation organized and existing
3 under the laws of the State of Delaware, in good standing, with its principal place of
4 business located at 650 Madison Avenue, New York, New York 10022. Upon
5 information and belief, Clear Channel Entertainment is a wholly-owned subsidiary or
6 affiliate of Clear Channel Communications that, until July 2001, did business as SFX
7 Entertainment, Inc.

8 12. Defendant Clear Channel Radio, Inc. ("Clear Channel Radio"), upon
9 information and belief, is a corporation organized and existing under the laws of the
10 State of Nevada, with its principal place of business located at 50 East Rivercenter
11 Blvd., 12th Floor, Covington, Kentucky 41011. Upon information and belief, Clear
12 Channel Radio is a wholly-owned subsidiary or affiliate of Clear Channel
13 Communications.

14 13. Defendant Clear Channel Broadcasting, Inc. ("Clear Channel
15 Broadcasting") is a corporation organized and existing under the laws of the State of
16 Nevada with its principal place of business located at 200 East Basse Road, San
17 Antonio, Texas 78209.

18 14. Defendant Live Nation, Inc. ("Live Nation") is a Delaware corporation
19 headquartered at 9348 Civic Center Drive, Beverly Hills, California 90210. Prior to
20 2000, Live Nation was independently owned and known as SFX. Clear Channel
21 Communications, Inc. acquired SFX in 2000 and SFX changed its name to Clear
22 Channel Entertainment in 2001. In December 2005, Live Nation was spun-off from
23 Clear Channel and became a publicly traded company. Live Nation is one of the
24 world's largest promoters and venue operators for live entertainment events. Although
25 Live Nation is now a separate, publicly owned company, it is dominated and controlled
26 by the same individuals who control Clear Channel Communications: L. Lowry Mays,
27 Mark P. Mays, and Randall T. Mays.

28

TRADE AND COMMERCE

15. Clear Channel is involved in interstate trade and commerce, and the activities of Clear Channel substantially and adversely affect interstate commerce. In the conduct of its business, Clear Channel, directly or indirectly, has used and uses the means and instrumentalities of interstate commerce in furtherance of the acts and communications alleged herein, including but not limited to, the United States postal system, the nationwide system, through and by means of which a substantial amount of the nation's communications, information exchanges, and transportation take place.

16. For example, Clear Channel uses all of these instrumentalities of interstate commerce to contact, book and bring performers to various venues throughout the United States, including in the Chicago Region. Concerts in various metro areas are regularly performed by entertainers from outside those areas, who themselves use the instrumentalities of interstate commerce to book and travel to the concerts, and upon information and belief, such concerts are attended by ticket-buyers from outside those areas, who use the instrumentalities of interstate commerce to purchase tickets and attend the concerts.

PRODUCT MARKET / GEOGRAPHIC MARKET

17. The relevant product market is the market for the sale of tickets to live rock concerts.

18. The relevant geographic market is the Chicago Region.

GENERAL ALLEGATIONS

A. Overview of the Concert Promotion Industry

19. Concert promoters are essentially the wholesalers for the live music industry. Promoters "buy" concerts from booking agents at wholesale prices negotiated separately between the agent and promoter. The promoter then "resells" the product as a live music event to the general public at retail prices in the form of a concert ticket. The booking agents are the authorized representatives for the musical

1 groups, or artists. Agents work directly with the artists and their managers to
2 determine the best venue opportunities.

3 20. The promoter is responsible for promoting the concert, which entails
4 determining and executing the proper advertising and marketing plan. Marketing
5 strategies may include use of a variety of channels to promote the event, including
6 print, TV, and street promotion (flyers); however, radio is by far the most effective tool
7 for promoting concerts because of its close relationship to the product being advertised.
8 Promoters also are responsible for, among other things: covering various expenses
9 associated with a concert, including transportation, hotel costs and production costs;
10 providing sound and lighting equipment, security, ushers, ticket takers and stage
11 managers; and securing a proper venue for the concert. The venue can be one that the
12 promoter either owns or rents. These promotions services have a direct impact on
13 ticket price.

14 21. The promoter ultimately takes full financial responsibility for the concert.
15 If ticket sales revenues are higher than the expenses for the concert, then the promoter
16 will make a profit; if not, the promoter will take a loss. As the concert industry has
17 matured, promoters have relied on different sources of income to offset risks associated
18 with promoting concerts. These sources of income include sponsorship deals, food and
19 beverage sales, and merchandise sales.

20 **B. The Concert Promotion Business**

21 22. The modern concert business began in the mid-1960s when a string of
22 regional independent promoters began opening or renting out small theaters and dance
23 ballrooms across the country. There were very few artists that could fill larger venues
24 in those days. In the early 1970s, the audiences grew to the point where artists began
25 filling arenas. At this point, some of these small “regional” promoters grew into large
26 companies built around the oversized personalities of their founders. Some of the
27 more famous examples were Bill Graham Presents in Northern California, Fey
28 Concerts in Colorado, Jam Productions in Chicago, and Don Law in Boston.

23. Around 1997, a major shift occurred when SFX, Inc., a company with no prior concert experience, raised billions of dollars and subsequently bought out nearly all of the major independent promoters in the business. An even more dramatic shift occurred in August 2000, when Clear Channel Communications purchased SFX. The result of this massive consolidation has been that Clear Channel has been able to book an entire tour nationwide, virtually eliminating the remaining individual promoters in any local geographic markets and allowing Clear Channel to set prices for tickets without competition in the Chicago Region. Clear Channel is the epicenter of the live concert promoting world in the United States. In its Annual Report on Form 10-K for 2001, Clear Channel stated: "Our recent entry into live entertainment operations allowed us to take advantage of the natural synergies between radio and live music events and to gain...leadership."

C. The Clear Channel Empire

24. Clear Channel Communications is a publicly-traded, multimedia corporation which, on its own and through various subsidiaries and affiliates, including the other Defendants, owns, programs, and/or sells air time for nearly 1,200 radio stations in the U.S. and has equity interests in another 240 radio stations overseas; promotes and/or produces more than 26,000 live entertainment events that are attended by approximately 62 million people per year; owns or controls more than 135 live entertainment venues, (by far more than any other promoter), including clubs, theaters, and large amphitheaters; owns or controls approximately 900 websites, including sites that allow visitors to listen to music and the radio on-line; owns or operates 19 television stations; and operates more than 700,000 outdoor advertising displays, including billboards, street furniture and transit panels worldwide. Clear Channel's net revenues in the year 2000 topped \$5.3 billion, a 100 percent increase over the company's 1999 revenues. No competitor exists on the same nationwide scale as Clear Channel. As of October 2001, the next largest radio company, Infinity Broadcasting

1 Corp., operated only 183 stations. By design, Clear Channel dominates the market for
2 live concert tickets.

3 25. Through its radio broadcasting arm, Clear Channel Radio, Clear Channel
4 reaches more than 110 million listeners nationwide every week. According to Clear
5 Channel's 2000 Shareholder Report and its own website, www.clearchannel.com:

6 "Clear Channel *is* radio" [bold and italics in original]

7 "No one is bigger, better or more intense than Clear
8 Channel Radio"

9 Clear Channel Radio "reaches more people than the
10 population of many countries"

11 "One out of every ten radio stations across the United States
12 broadcasts under the Clear Channel's banner" [sic]

13 "Clear Channel broadcasts in every top ten market and in 47
14 of the top 50"

15 Clear Channel's stations "take to the airwaves across all 50
16 states, in almost every major market, reaching nearly every
17 demographic with dozens of distinct formats from
18 News/Talk to New Wave"

19 Clear Channel is "the first . . . and only" radio company to
20 own more than 900 radio stations

21 "Clear Channel's radio stations are powerful weapons,
22 especially when they unite to target a common goal"

23 26. Randy Michaels, Chairman of Clear Channel's radio division, boasts that
24 Clear Channel has created "the first national footprint for radio." Forty seven of Clear
25 Channel's radio stations are known as "Kiss-FM" reportedly part of the Company's
26 vision of creating a national radio franchise.

27 27. Clear Channel's Premiere Radio Networks is the most widely distributed
28 and syndicated radio network in the nation, offering programming that has included

1 such highly recognizable names as Rush Limbaugh, Dr. Laura Schlessinger, Jim Rome
2 and Casey Kasem.

3 28. Just as Clear Channel Communications' radio arm dominates the
4 airwaves, its live entertainment arm, Clear Channel Entertainment, dominates the
5 concert promotion business. According to published reports, in 2001, Clear Channel
6 generated approximately 70% of concert ticket revenues in the U.S. and produced
7 more than 30 major music tours by such performers as U2, Madonna, Janet Jackson
8 and N'SYNC. The list of nationwide concert tours Clear Channel has promoted reads
9 like a Who's Who in the popular music industry, and in addition to those listed above,
10 it also includes the national tours of Britney Spears, Backstreet Boys, Dave Matthews
11 Band, The Rolling Stones and Tina Turner.

12 29. As recently as July 6, 2006, Live Nation has agreed to purchase one of its
13 biggest competitors in the concert promotion industry, House of Blues Entertainment,
14 Inc., for a reported \$350 million. This purchase will strengthen Defendants'
15 consolidation of the promotion business and thus monopolization of the relevant
16 market.

17 **D. Clear Channel's Domination of the National Concert Market Results in Its**
18 **Ability To Inflate Prices in the Chicago Region**

19 30. In August 2000, the same month that Clear Channel closed its \$23.8
20 billion merger with AMFM, Clear Channel also merged with SFX Entertainment, Inc.,
21 ("SFX") in a deal valued between \$2.9 - \$4.6 billion. Clear Channel continued to do
22 business as "SFX Entertainment" for almost a year following the merger but in July
23 2001 announced that it was dropping the SFX moniker and replacing it with the name
24 "Clear Channel Entertainment."

25 31. As a result of the merger, Clear Channel immediately became the nation's
26 largest promoter and producer of live entertainment events across the country, selling
27 almost nine million tickets alone in the first half of 2001 while its next closest
28 competitor sold only about a million.

1 32. Brian Becker, Chairman of Clear Channel Entertainment, attributes his
2 company's domination of the concert promotion industry to its status as "a nationwide
3 company with facilities in every major market and the ability to partner with [Clear
4 Channel] radio." According to Becker, "if you have forty markets, then you can put
5 together national promotions."

6 33. Critical decisions regarding those national promotions are made at the
7 national level by Clear Channel. In Clear Channel's Form 10-K, it admits that its live
8 entertainment division is based in New York. One commentator used the "lock, stock
9 and sequins" cancellation of the "Supremes Reunion" tour to explain the impact which
10 Clear Channel has had on the concert industry:

11 In the past, if a tour had ticket sale problems, what would
12 happen is that the promoters - typically local entrepreneurs -
13 would scramble around trying to book at smaller venue so
14 they could cut their losses. You'd almost never see a
15 complete cancellation, because the promoter would rather
16 sell 40 percent of his tickets than have to come up with the
17 full amount he'd promised the musicians out of his own
18 pocket. In any case, it would be a city-by-city decision.

19 * * *

20 Now, the concert business is owned almost exclusively by
21 one giant corporation . . . [i]t is now virtually impossible to
22 mount a national tour without making a deal with [Clear
23 Channel]. More and more often the company simply
24 "purchases" a tour, buying a band out for one big lump sum
25 and telling 'em where they're going to play and when.
26 That's what [Clear Channel] did this summer with N'Sync,
27 Ozzy Osbourne and Pearl Jam.
28

1 34. Clear Channel not only acknowledges but also *boasts* about its national
2 presence, often referring to its “national footprint.” For example, in a press release
3 touting a new advertising sales product, Clear Channel claimed:

4 “Clear Channel Advantage leverages the power of Clear
5 Channel’s unique national footprint . . . the Clear Channel
6 Advantage advertiser may now exploit any combination of
7 radio, TV, outdoor and entertainment advertising or
8 marketing opportunities across geographies as custom as a
9 single market, a *regional trading area*, the entire country, or
10 globally.”

11 (emphasis supplied).

12 **E. Clear Channel’s Unlawful Conduct**

13 35. Clear Channel has engaged in a vast array of anticompetitive, predatory
14 and exclusionary practices in the course of acquiring, maintaining and extending its
15 monopoly power in the relevant market.

16 36. Clear Channel has eliminated competition in the relevant market by
17 acquiring or merging with many of its principal competitors both in the radio
18 broadcasting market and in the concert promotion market. This includes, most notably,
19 the AMFM and SFX mergers in August 2000, but also includes Clear Channel’s more
20 recent acquisitions of smaller promoters.

21 37. Clear Channel has weakened or eliminated competition in the relevant
22 market by hiring away from competitors experienced personnel, including
23 representatives with well established followings in the concert promotion industry.
24 Moreover, upon information and belief, when Clear Channel’s mergers and
25 acquisitions with other concert promoters have resulted in lay-offs, Clear Channel
26 routinely has required personnel leaving the company to enter into non-competition
27 agreements, thus ensuring a widespread preclusion of competition from some of the
28 most experienced people in the business.

1 38. The dynamics of FM radio broadcasting in the United States are such that
2 many radio stations dedicate their daily programming to certain distinct musical
3 formats, each of which attracts its own unique set of loyal listeners. Clear Channel
4 Communications Form 10-K, for the fiscal year ended December 31, 2000,
5 acknowledges that “[a] station’s format is important in determining the size and
6 characteristics of its listening audience,” and that “[a]dvertisers tailor their
7 advertisements to appeal to selected population or demographic segments.”

8 39. Radio station formats, therefore, are critically important to promoters and
9 the artists they promote. According to John Scher, a director of Metropolitan
10 Entertainment Group, a promotion company in New York which attempted to compete
11 with Clear Channel: “It’s an awesome task to compete against a company that controls
12 most of the music radio in a market.”

13 40. Thus, other promoters’ ability to promote their concerts on Clear
14 Channel’s stations - and the artists’ ability to secure air play of their music on those
15 stations - can and does determine the financial success (or failure) of promoters, the
16 artists and their concerts. This is especially true with new artists.

17 41. Clear Channel repeatedly has used its size and clout to coerce artists -
18 including artists who had pre-existing business relationships with competitors - to use
19 Clear Channel to promote their concerts or else risk losing airplay and other on-air
20 promotional support on radio stations owned or otherwise controlled by Clear Channel.
21 Upon information and belief, because of the critical importance of having access to air
22 play and other promotional time on Clear Channel’s radio stations, which span the
23 country and therefore can critically affect a national tour, many artists believe they
24 have no choice but to use Clear Channel to promote their concerts.

25 42. Clear Channel is leveraging its market power over certain dedicated
26 formats of local FM radio - where it enjoys complete control over the content aired - to
27 unlawfully acquire, maintain and extend its market power over the concert promotion
28 business in the relevant market. Jerry Michelson, a partner in Jam Productions, has

1 publicly stated: "Clear Channel uses the leverage of their radio stations to intimidate
2 groups to play [concerts] for them." Such conduct has been and will continue to be
3 devastating to Clear Channel's competitors, because access to air play and on-air
4 promotional support is critical to the development and success of its artists and,
5 accordingly, to the success of other promoters' concert promotion business.

6 43. Clear Channel's nationwide practice of threatening to deny, and in fact
7 denying, critical air play and other on-air promotional support to competitors' artists
8 unless they agree to use Clear Channel to promote their concerts has caused
9 competitors to lose many business relationships and prospective relationships. In
10 Southern California in 2001, the band "POD" cancelled an exclusive concert for a non-
11 Clear Channel station because of the perceived threat that airplay on Clear Channel
12 stations would be denied.

13 44. Clear Channel's conduct has placed other promoters at a competitive
14 disadvantage by adversely impacting their ability to attract and retain clients for their
15 businesses.

16 45. Upon information and belief, Clear Channel intends to continue and
17 extend its anticompetitive, predatory and exclusionary conduct. In the "Company
18 Strategy" section of its Form 10-K, for the fiscal year ended December 31, 2000, Clear
19 Channel Communications stated as follows: "We can now leverage our broadcasting
20 assets to reach listeners who have an affinity for music to promote our live
21 entertainment events and ultimately increase ticket revenue." Similarly, Clear
22 Channel's website states that the "opportunities for synergies" among Clear Channel's
23 various business divisions "are explosive ... and are in the very early innings."

24 46. Clear Channel has been bidding up the fees paid to artists to such levels
25 that other promoters cannot profitably compete. In some cases, Clear Channel has
26 guaranteed artists more than 100 percent of gross sales to promote their concerts,
27 leaving other promoters no choice but to either pass on such concerts or promote them
28 at a guaranteed loss. Upon information and belief, Clear Channel will be able (and has

1 already begun) to recoup, through artificially inflated ticket prices to consumers and
2 lower payments to artists, its losses from such tactics when other promoters are driven
3 from the market. In an article published in The New York Times on August 12, 2002,
4 *The Lost Boys: How A Pop Sensation Came Undone*, by Neil Strauss, it was reported
5 that Clear Channel purchased the entire Backstreet Boys 2001 national tour for
6 \$100,000,000 and then set “extremely high ticket prices” to recoup the costs. In
7 competing with a Denver based promoter for Bonnie Raitt concerts, Clear Channel bid
8 more than double for the shows than the Denver based promoter and consequently
9 charged ticket buyers far more than the \$30.00 ticket price planned by the Denver
10 promoter.

11 47. Clear Channel has eschewed the historical industry practice of promoting
12 concerts at the local level and instead has been leveraging its dominant position in
13 radio and its control over venues to secure control over artists’ entire national tours.
14 Among other things, Clear Channel offers these artists large, up-front premiums, which
15 other promoters cannot afford to match. Clear Channel’s reach thus extends
16 nationwide, and allows it to determine pricing of tickets on a regional basis without
17 fear of competition or competitive pressures from other promoters or competing
18 venues.

19 48. With respect to competitors’ efforts to place advertisements and otherwise
20 promote its artists on local radio stations owned or operated by Clear Channel or its
21 subsidiaries, Clear Channel has either limited advertising availability to undesirable
22 time slots and placements or eliminated it completely; charged excessive advertising
23 rates; misrepresented the availability of advertising time (e.g., by stating that Clear
24 Channel is “out of inventory” when it actually ran its own advertisements instead);
25 intentionally excluded artists promoted by others from their “concert calendars”
26 (regular updates of upcoming concerts); and eliminated miscellaneous promotions
27 (such as ticket giveaway contests) for artists not promoted by Clear Channel.

F. Anticompetitive Effects of Clear Channel's Unlawful Conduct

49. Clear Channel's monopolistic and predatory practices have had the following anticompetitive effects, among others, in the relevant market:

- a. Competition in the relevant market has been unreasonably restrained, suppressed, and, in some cases, destroyed;
- b. Potential competitors have been restrained from entering into the relevant market and have been prevented from competing effectively against Clear Channel;
- c. Clear Channel's monopoly has been entrenched and expanded, resulting in greater domination of the relevant market and the enhancement of barriers to entry;
- d. Clear Channel's unlawful leveraging of its economic strength in the FM radio business has resulted in the diversion to Clear Channel of artists who in a free and open market would otherwise turn to others for concert promotion services;
- e. Fans of music artists promoted by others have been denied the benefits of competition in a free and open market and have been forced to pay artificially high ticket prices;
- f. The airing of artists' music promoted by others has been reduced, thereby depriving consumers of entertainment they would otherwise have available to them;
- g. The on-air promotion of concerts has been reduced, thereby depriving consumers of information they otherwise would have available to them;
- h. Upon information and belief, Clear Channel has enjoyed, and will continue to enjoy, monopolistic profits to the detriment of competitors and purchasers of concert tickets from Clear Channel;

1 i. Although the price of tickets within the Chicago Region may be
2 different, Clear Channel's monopolistic behavior has raised ticket
3 prices in the Chicago Region in a measurable amount and,
4 therefore, Clear Channel's behavior has impacted and injured the
5 Class in its entirety, regardless of the particular venue of an
6 individual concert.

7 50. The aforementioned anticompetitive effects of Clear Channel's conduct
8 on competition in the relevant market outweigh any conceivable pro-competitive
9 benefits.

10 **CLASS ACTION ALLEGATIONS**

11 51. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) of the
12 Federal Rules of Civil Procedure, on behalf of herself and the following Class:

13 All persons who purchased tickets to any live rock concert
14 in the Chicago Region directly from any of the Defendants
15 or their affiliates or predecessors or agents during the period
16 from June 19, 1998 to the present.

17 The Class does not include, Defendants, their respective parents, subsidiaries and
18 affiliates and any judge or magistrate presiding over this action and members of their
19 families within the third degree of relationship.

20 52. Plaintiff does not know the exact size of the Class since such information
21 is exclusively in the control of Defendants. However, due to the nature of the trade
22 and commerce involved and the size of the venues owned, operated and/or exclusively
23 programmed by Clear Channel in the Chicago Region, Plaintiff believes that there are
24 thousands of Class members, and that they are sufficiently numerous and
25 geographically dispersed throughout the United States so that joinder of all Class
26 members is impracticable.

1 53. Plaintiff's claims are typical of the claims of the members of the Class,
2 because Plaintiff and all Class members were damaged by the same wrongful conduct
3 of Defendants as alleged in this Complaint.

4 54. Plaintiff will fairly and adequately protect the interests of the Class. The
5 interests of Plaintiff coincide with, and are not antagonistic to, those of the Class. In
6 addition, Plaintiff is represented by counsel who are experienced and competent in the
7 prosecution of complex class action and antitrust litigation.

8 55. Questions of law and fact common to members of the Class predominate
9 over any questions which may affect only individual members. Common questions of
10 law and fact include:

- 11 a. whether the relevant market consists of the market for the sale of
12 tickets to live rock concerts in the Chicago Region;
- 13 b. whether Defendants have monopolized and attempted to
14 monopolize the relevant market;
- 15 c. whether Defendants intentionally and unlawfully excluded
16 competitors and potential competitors from the relevant market;
- 17 d. whether Defendants' unlawful conduct caused Plaintiff and the
18 Class members to pay more for concert tickets than they otherwise
19 would have paid;
- 20 e. whether Plaintiff and members of the Class are entitled to
21 declaratory, equitable and/or injunctive relief; and
- 22 f. whether Plaintiff and the Class have been damaged and the amount
23 of such damages.

24 56. Class action treatment is a superior method for the fair and efficient
25 adjudication of the controversy, in that, among other things, such treatment will permit
26 a large number of similarly situated persons to prosecute their common claims in a
27 single forum simultaneously, efficiently, and without the unnecessary duplication of
28 evidence, effort, and expense that numerous individual actions would engender. The

1 benefits of proceeding through the class mechanism, including providing injured
2 persons or entities with a method for obtaining redress for claims that might not be
3 practicable to pursue individually, substantially outweigh any difficulties that may arise
4 in management of this class action.

5 57. Plaintiffs know of no difficulty to be encountered in the litigation of this
6 action that would preclude its maintenance as a class action.

7 **FIRST CLAIM FOR RELIEF**

8 **(Violation of 15 U.S.C. § 2 Sherman Act Section 2 - Monopolization)**

9 58. Plaintiff incorporates by reference the allegations contained in paragraphs
10 1 through 57 above.

11 59. Clear Channel has monopoly power in the relevant market and has the
12 ability to control prices and exclude competition.

13 60. There are high entry barriers associated with the business of promoting
14 concerts in the United States, including, among others, the industry expertise required
15 to promote such concerts; the ability to develop a reputation in the industry as being a
16 competent promoter; access to artists and the ability to develop relationships with
17 them; access to the radio airwaves; access to concert venues; the goodwill and name
18 recognition of Clear Channel achieved via advertising and other means; financial
19 wherewithal; and the position which Clear Channel now occupies as a monopoly
20 promoter in the U.S. and in the Chicago Region with respect to nationwide tours

21 61. Through its mergers and acquisitions and other anticompetitive conduct
22 described above, Clear Channel has willfully acquired and maintained monopoly
23 power with the intent to gain an unfair competitive advantage and charge supra-
24 competitive prices for tickets in the relevant market. Clear Channel continues to
25 dominate this market through the unlawful conduct described above, to the detriment
26 of Plaintiff and the Class.

62. During the Class Period, by the conduct described herein, Defendants engaged in exclusionary, anticompetitive conduct designed to prevent competition in the relevant geographic and product market.

63. The foregoing acts and conduct by Defendants have prevented or suppressed competition, and continue to prevent or suppress competition, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

64. As a direct and proximate result of Clear Channel's monopolistic conduct, competition in the relevant market has been unreasonably restrained and injured, and consumers have been damaged through the supra-competitive ticket prices they have been charged and will continue to be charged. Plaintiff and the members of the Class have suffered and will continue to suffer damages as a result of Clear Channel's wrongdoing as alleged herein.

SECOND CLAIM FOR RELIEF

(Violation of 15 U.S.C. § 2 - Sherman Act Section 2 - Attempted Monopolization)

65. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 64 above.

66. Clear Channel has engaged in the predatory and anticompetitive conduct described above with the specific intent to monopolize the relevant market.

67. Clear Channel possesses, and has demonstrated, a dangerous probability of achieving monopoly power in the relevant market. Clear Channel continues to dominate this market through the unlawful conduct described above, to the detriment of Plaintiff and the Class.

68. As a direct and proximate result of Clear Channel's monopolistic conduct, competition in the relevant market has been unreasonably restrained and injured, and Plaintiff and the members of the Class have paid supra competitive prices for tickets. As a result of Defendant's unlawful conduct, Plaintiff and members of the Class have suffered and will continue to suffer damages.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68 above.

70. As a direct and proximate result of the unlawful conduct described above, Clear Channel has been and will continue to be unjustly enriched. Clear Channel's unlawful acts, including tying and the use of monopoly power, are designed to extract supra-competitive prices for concerts from ticket purchasers. Specifically, Clear Channel has been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and illegal monopoly profits on its sale of concert tickets.

71. Clear Channel has benefited from its unlawful acts and it would be inequitable for Clear Channel to be permitted to retain any of the ill-gotten gains resulting from the overpayments for concert tickets made by Plaintiff and the Class.

72. Plaintiff and members of the Class are entitled to the amount of Clear Channel's ill-gotten gains resulting from its unlawful, unjust and inequitable conduct. Plaintiff and members of the Class are entitled to the establishment of a constructive trust consisting of all overcharges from which Plaintiff and the Class members may make claims on a pro rata basis.

73. Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff prays that:

A. The Court determines that this action may be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiff's claims for injunctive relief, and Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and declaring Plaintiff as the representative of the Class and her counsel as counsel for the Class;

B. The Court declares the conduct alleged herein to be unlawful in violation of the federal antitrust laws and the common law of unjust enrichment;

1 C. Plaintiff and each member of the Class recover punitive and treble
2 damages to the extent such are provided by the law;

3 D. Plaintiff and each member of the Class recover the amounts by which the
4 Defendants have been unjustly enriched in accordance with state law;

5 E. Defendants be enjoined from continuing the illegal activities alleged
6 herein;

7 F. Plaintiff and the Class recover their costs of suit, including reasonable
8 attorneys' fees and expenses as provided by law; and

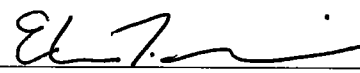
9 G. Plaintiff and the Class be granted such other, further, and different relief
10 as the nature of the case may require or as may be determined to be just, equitable and
11 proper by this Court.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial by jury.

14
15 DATED: March 27, 2007

MALINDA RILEY, individually and
on behalf of all others similarly
situated,

17 By: 
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PROOF OF SERVICE

I, the undersigned, declare and state:

That the decelarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 700 S. Flower St., Ste. 2940, Los Angeles, CA 90017-4101.

On March 27, 2007, I served the forgoing document described as

THIRD AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action as follows:

[x] BY OVERNIGHT DELIVERY

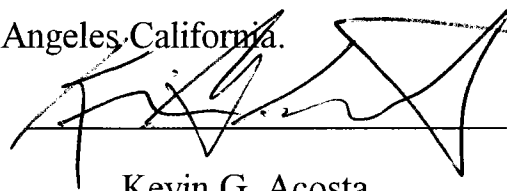
By placing a true copy thereof enclosed in sealed envelopes addressed as follows: **SEE ATTACHED SERVICE LIST**. After sealing said envelope, declarant caused same to be delivered to the aforementioned by a qualified commercial overnight delivery service with delivery fees thereon fully prepaid

[x] BY EMAIL

By causing the above listed documents to be served via E-MAIL from Kevin G. Acosta to the e-mail addresses as follows: **SEE ATTACHED SERVICE LIST**

I declare under the penalty of perjury, under the laws of the United States of America that the foregoing is true and correct.

Executed on March 27, 2007, at Los Angeles, California.

A handwritten signature in black ink, appearing to read 'Kevin G. Acosta', written over a horizontal line.

Kevin G. Acosta

SERVICE LIST

In re: Live Concert Antitrust Litigation
CASE NO.: 2:06-ML-01745 SVW-(RCx)
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PLAINTIFFS

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